TESTIMONY OF R. PERRY BEAVER,
PRINCIPAL CHIEF, MUSCOGEE (CREEK) NATION,
IN SUPPORT OF H.R. 2880, the "FIVE NATIONS INDIAN LAND REFORM ACT,"
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
SEPTEMBER 18, 2002

Chairman Inouye, Vice-chairman Campbell, and Members of the Committee:

Thank you for this opportunity to share some of my thoughts with you about H.R. 2880, the "Five Nations Indian Land Reform Act." My name is R. Perry Beaver. I am a fullblood member of the Muscogee (Creek) Nation. I have spent most of my life in the Muscogee Nation. I have served as the Principal Chief of the Muscogee Nation for the past seven years. For many years before that, I served as a member of the National Council of the Muscogee Nation. My grandparents owned restricted land within the Muscogee Nation, my parents owned restricted land and I also own restricted land. During my lifetime, I have seen first hand that the federal system for the protection of restricted Indian lands within the Muscogee Nation has *not* protected these lands, and has caused great hardship on Indian landowners.

The current federal laws affecting our restricted lands are complicated and confusing. The Five Nations Indian Land Reform Act, H.R. 2880, will significantly reform existing federal legislation governing restricted lands owned by allottees, and descendants of allottees, of the Muscogee (Creek), Cherokee, Seminole, Choctaw and Chickasaw Nations. H.R. 2880 is the result of more than a decade of research, meetings and refining of the bill's language. The original version of this legislation was drafted by a workgroup of tribal officials, realty employees, tribal attorneys, and representatives of the Department of the Interior over a three year period, starting around 1991. It was finally approved by the Five Civilized Inter-tribal Council and forwarded to the Department of Interior in 1995. There was a period during which little, if any activity occurred on the bill. In 1998, the Five Nations again focused on the bill's development and momentum began to build toward the successful completion of this task.

The bill before you today is the result of tedious and thoughtful work by numerous persons, and many, many revisions. We have received considerable input and technical assistance from the Department of the Interior personnel at the Muskogee Regional Office and

the Tulsa Field Solicitor's Office, all of whom have extensive and unique experience with the implementation of existing federal land laws affecting Indians in eastern Oklahoma. We have held meetings with members of the Oklahoma Bar Association Probate Committee and Real Property Section. Based on their comments and suggestions, we made changes. We have spent long hours discussing recommendations with the BIA Central Office, and have made more changes. During the past three years, we have also utilized the expertise of Congressional staff. They have played a major role in ensuring that this legislation is consistent with federal Indian policy and is drafted in such a way as to ensure that the intent of its provisions is clearly stated.

I would like to take a few moments to talk about some of the problems that restricted landowners in eastern Oklahoma have encountered. One of the biggest problems is the historic inability of heirs of restricted landowners to have the estates probated. There are now a huge number of unprobated estates involving restricted property. Most of these estates have not been probated because Indian heirs do not have money to hire private attorneys to file probates in the state court system, which is required by current law. History has also shown that countless acres of restricted lands have been lost when state courts have authorized the sale of the restricted lands in estates in order to pay the costs and attorneys fees for probate of the estate. This often involved sale of the entire restricted estate, rather than sale of just enough property to pay the costs and attorneys fees.

Since enactment of the Act of June 14, 1918, the Oklahoma state courts have had jurisdiction over actions to determine heirs of owners of individual restricted Five Tribes allotments. The Act of August 4, 1947 (the 1947 Act) gave state courts exclusive jurisdiction of all guardianships and probates affecting Indians of the Five Nations. This federal use of a state system to perform federal trust responsibilities has not occurred anywhere else in the country. It has been a failure.

H.R. 2880 will stop the filing of future heirship and probate cases involving restricted lands in Oklahoma state court. Instead, the Secretary's designee will have exclusive jurisdiction to probate wills, hear estate actions or otherwise determine heirs of deceased owners of restricted and trust property, including restricted or trust funds or securities. The bill

authorizes the Secretary to designate administrative law judges or other officials to perform these probate duties. However, it will permit any probate or heirship proceedings that are pending in Oklahoma state district court as of the effective date of the act to be concluded in state court.

Federal administrative jurisdiction over probates and heirships involving trust and restricted property will help heirs of deceased restricted Indian landowners to finally obtain title to their restricted lands. There will no longer be a need for the heirs to hire private attorneys to probate restricted estates. The case will be prepared administratively by realty personnel and then submitted to an Indian probate judge. Indian heirs will not need to hire attorneys, and there will be no filing fees. During the past year or two, the BIA has established new "attorney decision maker" positions throughout the country to probate Indian trust estates. There is now an "attorney decision maker" assigned to western Oklahoma to deal with probates involving trust property. Enactment of the H.R. 2880 will result in the creation of new "attorney decision maker" positions in eastern Oklahoma. They will deal solely with probates of Five Nations restricted and trust estates, and by hard work by tribal and federal personnel, and with proper funding, we can finally resolve the problem of unprobated estates.

H.R. 2880's provisions for probates of restricted estates will implement current laws concerning probates of trust estates of deceased Indians in western Oklahoma and other parts of the country. If a deceased Indian owned trust property, the trust estate will be administered and distributed by an attorney decision maker or an administrative law judge. If the decedent Indian owned non-trust property, the non-trust estate will be administered and distributed within the Oklahoma state court system. The bill will also allow non-Indian record owners of property purchased or leased from undetermined heirs to request an administrative law judge or attorney decision maker to determine the heirs of the decedent, so that they can establish marketable title and protect lease interests.

The bill will reduce the number of cases filed in state and federal court involving restricted land. The general practice has been to file suits in Oklahoma state courts involving restricted property, in order to cure title defects, to acquire property by adverse possession and to determine heirs of decedent Indians. These actions are subject to removal to federal

court under the Act of April 12, 1926.

The use of adverse possession as a way of taking restricted Indian land has been a unique problem faced by restricted Indian landowners. This problem started when Congress enacted the Act of April 12, 1926, which made the Oklahoma statute of limitations apply to restricted land. Nowhere else in the country are state statute of limitations applied to Indian lands. In eastern Oklahoma, the Oklahoma statute of limitations is used to allow persons to acquire title to property if they meet various requirements, including open and hostile possession of the land for a period of fifteen years or more. Many acres of restricted lands have been lost through adverse possession. H.R. 2880 has been drafted to eventually place restricted lands in the same status as trust lands which are not subject to adverse possession. It will allow adverse possession of restricted lands only if all requirements of Oklahoma law for acquiring title by adverse possession, including the running of the full 15-year limitations period, have been met before the effective date of the act. Eventually, adverse possession of restricted lands will become a thing of the past.

A large amount of restricted Indian land in eastern Oklahoma has also been lost through forced partition sales which were filed in state court, based on the Act of June 14, 1918, which made state partition laws applicable to restricted lands in eastern Oklahoma. This 1918 law is different from federal laws and regulations applicable to partition of trust property. Under those laws, partitions of trust property are under the Secretary's jurisdiction. Under H.R. 2880, involuntary partition of trust property and voluntary partition of restricted and trust property will be removed from state court jurisdiction. Those partitions will be under the Secretary's jurisdiction.

The bill will continue to allow involuntary partition of restricted property to be filed in state or federal court for ten years from the effective date of the act. Under state law, an owner of an undivided interest, no matter how small, can force the sale of the entire acreage. Although this will not change immediately under the provisions of the proposed bill, the proposed bill *will* allow an Indian owner who doesn't consent to a partition sale to receive a minimum of 90% of the appraised value and will not allow assessment of costs against nonconsenting owners. This will be an improvement, since at the present time, Indian owners

may receive only two-thirds of the appraised value of property sold in a forced partition, and the costs of the proceedings are paid from the sales proceeds before distribution to the Indian owners.

H.R. 2880 will also establish a non-judicial procedure for Indians and non-Indians to cure certain types of title defects in restricted property or former restricted property, without requiring the owner to file a quiet title action. This will save the landowners money, without putting a greater burden on the federal government. Under current law, there is already extensive federal involvement. Notice of quiet title suits involving restricted property must be given to the BIA Eastern Oklahoma Regional Director. Regional Office staff and tribal realty staff must conduct a detailed review, to determine whether the federal government should consider further involvement in the case. Many cases are referred to the Tulsa Field Solicitor's Office. Some cases require representation by the United States Attorney and removal to federal court. The bill will streamline the process and will be more efficient.

Types of title defects related to restricted property or former restricted property which may be cured using this non-judicial procedure involve situations where it would be difficult, if not impossible, to invalidate a transaction and return title to the original Indian owner or his or her heirs, due to statute of limitations problems. The types of defects which may be cured through this procedure involve transactions that occurred more than 30 years before the effective date of the act without full compliance with federal laws, such as failure to follow federal notice requirements, situations where the state court approved a sale or issued a probate order when a federal official actually had that authority, or cases where a federal official approved a sale when the state court had that authority.

The United States district courts in the State of Oklahoma and Oklahoma state district courts will still keep jurisdiction over quiet title actions, provided that they meet various requirements. H.R. 2880 also authorizes the courts of the State of Oklahoma to continue to exercise Federal instrumentality authority over heirship, probate, partition, and other actions involving restricted property pending on the effective date of the act, unless the petitioner, personal representative, or State court dismisses the action.

H.R. 2880 will repeal various inconsistent federal laws, as well as laws that it has

revised. This will be helpful, because it will do away with scattered laws that are in some cases almost a century old, and will replace these laws with one centralized and organized law that will be more accessible to the people affected by the law, and to the persons who must assist in implementation of the law.

The bill before you is not perfect. It is not possible to have a perfect bill, especially when there are so many factors and issues that must be covered by this law. But I believe that this bill is ready to be enacted into law. I believe that the time is long overdue for Congressional action to remedy the inequitable federal legislative treatment that the Five Nations have received for the past century. I believe that by taking this step, Congress will enable our people to keep those last few remaining acres of restricted Indian lands within their families. In a twenty year period between 1978 and 1998, more than 11,482 acres of restricted lands became unrestricted, and it is likely that most of these lands went out of Indian ownership altogether. The bill will not increase the Indian land base, but it will reduce the amount of land that is being lost. We cannot afford to wait any longer for this legislative reform. I ask that this Committee use all possible speed to take appropriate action to ensure that this bill is enacted into law in 2002. Again, thank you for this opportunity to appear before you today.